



October 8, 2001

Mr. James L. Hall  
Assistant General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342

OR2001-4517

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 152975.

The Texas Department of Criminal Justice (the "department") received a request for "copies of any and all parole records and documentation relating to [the requestor] concerning [the requestor's] detention in the Correctional Services Corporation STISF between September 5, 2000, and December 21, 2000." You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered the requestor's comments. Gov't Code § 552.304.

We first note, and the department acknowledges, that the department failed to request a ruling from this office within the ten business day period required in section 552.301 of the Government Code. Subsections 552.301(a) and (b) provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

In addition, the requestor claims that he did not receive the department's notice of its intention to seek an attorney general decision within ten business days of the department's receipt of his request. Because the department failed to comply with section 552.301, the requested information is presumed to be public information. Gov't Code § 552.302.

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); see Open Records Decision No. 630 (1994). Compelling reasons exist when the information is made confidential by law or affects the interest of a third party. Open Records Decision No. 630 at 3 (1994). In this instance, you assert that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code. The application of section 552.101 presents a compelling reason to overcome the presumption of openness.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You assert that the "requested information is about an offender released on mandatory supervision or parole under the supervision of the Parole Division of TDCJ." You further state that "as part of the requirements of release, the requestor underwent treatment in a Parole Division Intermediate Sanction Facility," and that "[t]he responsive documents are parole records of [the requestor] from that treatment program." You assert that therefore the submitted documents are confidential and privileged under section 508.313 of the Government Code. Section 508.313 states:

(a) All information obtained and maintained, including a victim protest letter or other correspondence, a victim impact statement, a list of inmates eligible for release on parole, and an arrest record of an inmate, is confidential and privileged if the information relates to:

(1) an inmate of the institutional division subject to release on parole, release to mandatory supervision, or executive clemency;

(2) a releasee; or

(3) a person directly identified in any proposed plan of release for an inmate.

(b) Statistical and general information relating to the parole and mandatory supervision system, including the names of releasees and data recorded relating to parole and mandatory supervision services, is not confidential or privileged and must be made available for public inspection at any reasonable time.

(c) The department may provide information that is confidential and privileged under Subsection (a) to:

- (1) the governor;
- (2) a member of the board;
- (3) the Criminal Justice Policy Council in performing duties of the council under Section 413.021; or
- (4) an eligible entity requesting information for a law enforcement, prosecutorial, correctional, clemency, or treatment purpose.

(d) In this section, "eligible entity" means:

- (1) a government agency, including the office of a prosecuting attorney;
- (2) an organization with which the department contracts or an organization to which the department provides a grant; or
- (3) an organization to which inmates are referred for services by the department.

(e) This section does not apply to information relating to a sex offender that is authorized for release under Chapter 62, Code of Criminal Procedure.

(f) This section does not apply to information that is subject to required public disclosure under Section 552.029.

A releasee is a person released on parole or to mandatory supervision. Gov't Code §508.001(9). Based on your representations and our review of the submitted information, we agree that the submitted information is made confidential by section 508.313(a)(2). The requestor does not appear to be an entity authorized to obtain the submitted information under section 508.313(c). In addition, the submitted information is not made public under section 552.029 of the Government Code,<sup>1</sup> *see* Gov't Code § 508.313(f), or under

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<sup>1</sup>Section 552.029 provides that, notwithstanding sections 508.313 or 552.134, certain information about an inmate who is confined in a facility operated by or under a contract with the Texas Department of Criminal Justice is subject to required disclosure under the Public Information Act.

chapter 62 of the Code of Criminal Procedure,<sup>2</sup> *see* Gov't Code § 508.313(g). We therefore conclude that the submitted information is excepted from disclosure under section 552.101 of the Government Code and must not be released to the requestor.

Finally, we note that the requestor claims that he has a special right of access to the requested information under section 552.023 of the Government Code. Section 552.023 in relevant part states:

(a) A person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests.

(b) A governmental body may not deny access to information to the person, or the person's representative, to whom the information relates on the grounds that the information is considered confidential by privacy principles under this chapter but may assert as grounds for denial of access other provisions of this chapter or other law that are not intended to protect the person's privacy interests.

We note that section 552.023(b) provides that a governmental body “may assert as grounds for denial of access other provisions of this chapter or other law that are not intended to protect the person's privacy interests.” In this instance, the requested information is confidential under section 508.313 of the Government Code for reasons other than the protection of the privacy interests of the requestor. We also note that section 508.313 specifically identifies those entities to which the information at issue may be released. The requestor has not shown that he is authorized to obtain the submitted information under section 508.313(c). Therefore, the requestor does not have a special right of access to the information at issue under section 552.023 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must

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<sup>2</sup>Chapter 62 of the Code of Criminal Procedure relates to the registration of sex offenders and provides at article 62.08 that *registration information* is to be maintained by the Department of Public Safety in a central database which, with certain exceptions, is public information.

appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).


If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dept. of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/DKB/sdk

Ref: ID# 152975

Enc: Submitted documents

c: Mr. Ronald D. Perkins  
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(w/o enclosures)